REMARKS

This Amendment and Response is filed in response to the Office Action mailed on April 23, 2007.

Claims 1-10 were amended, no claims are canceled; as a result, claims 1-10 are now pending in this application.

§112 Rejection of the Claims

Claims 1-10 were rejected under 35 U.S.C. § 112 as being indefinite with regard to the, "without viewer interaction" language in the previously submitted claims. As currently amended herein, the pending claims have been amended to recite, "without requiring viewer action" as supported by the patent specification filed in the present case. In particular, the Zeidman patent specification states:

> [0020] In another embodiment, the television 106 receives one-way transmissions 104 from the network broadcast transmitter 101. Embedded in the transmission are HTTP protocol messages containing information about the show being broadcast, the sponsors of the show, and the current time. Other information can also be embedded and sent to the television 106 for other purposes. The embedded information is stored on the hard disk 107. During the broadcast or at a later time, the television 106 connects to the database server 103 which is part of a website on the Internet 102. The television 106 sends the information on the hard disk 107 to the database server 103 via the Internet 102. The database server 103 stores the information in its database. (Zeidman patent specification, paragraph 20, emphasis added)

This portion, and other portions of the filed specification, clearly describe an implementation in which no user action is required to accomplish the various tasks described. Each of the components of the inventive system can perform the described functions without requiring user action. As such, the filed specification supports the amended claim language. The Applicant respectfully requests withdrawal of the § 112 rejection.

§103 Rejection of the Claims

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the 1997 Broadcast of "Schindler's List" on NBC in view of Matheny et al. (U.S. Patent No. 6,766,524; hereinafter "Matheny").

Applicant has amended the pending claims to include the limitation, "...the embedded information including information indicative of one or more sponsors of the broadcast. As the example passage from the Zeidman patent specification set forth above demonstrates, the filed specification supports this limitation in the currently amended claims. In particular, the information embedded in the broadcast includes information indicative of one or more sponsors of the broadcast. Matheny teaches no such system. Matheny describes triggers and reward templates; but, doesn't mention including sponsor information as embedded with the broadcast (e.g. in the VBI). As such, claims 1-10 as amended herein are patentable over Matheny. The Applicant respectfully requests withdrawal of the § 103(a) rejection.

Applicant continues to assert that the previously submitted claims with the limitations including, "without commercial interruption" distinguish over Matheny, the 1997 Broadcast of "Schindler's List" on NBC, and all other art of record. However, the claims have been amended herein to further distinguish the claimed invention from the art of record. Specifically, amended Claim 1 includes the following limitation:

> "...at a predetermined time and without requiring viewer action, sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record..." (Emphasis Added)

The Office Action contended that the previously submitted limitation of, "...at a predetermined time, sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record..." is taught/suggested by the Matheny. Specifically, the Office Action referenced Figures 2 and 4 of Matheny as teaching this limitation.

Matheny is directed at a system and method for encouraging viewers to watch television programs. As described in Matheny,

> ...viewers are notified that they can receive frequent-flier miles for answering one or more simple questions at the conclusion of the commercial. To verify that the viewer paid attention to the commercial, the answer to the question may be based on the content of the commercial. A sponsor might ask, for example, that the viewer identify the name of the sponsor or the color of an announcer's shirt. A correct answer indicates that the viewer watched the

commercial, and that the viewer is therefore entitled to some reward... (Matheny Abstract) (emphasis added).

In other embodiments, viewers need not provide a "correct" answer, but may be rewarded for merely participating in the interactive program. Such participation may include selecting an icon with a pointing device, pressing one or more buttons on a remote control, or sending an email message to a location identified in the program. (Matheny Summary) (emphasis added).

In accordance with the invention, broadcaster 205 notifies viewers of television set 235 that they may be rewarded for paying attention to a current or upcoming program, typically a commercial. Later, viewers are presented a question, the answer to which is based upon the content of the program. Viewers that provide the correct answer are entitled to the reward. The identities of viewers who provide correct answers to the question are therefore forwarded to server 220, within which is maintained a database of viewers and corresponding earned entitlements. (Matheny Detailed Description, 3rd paragraph) (emphasis added)

The possibility of receiving a reward will entice some viewers to claim rewards without bothering to watch the associated commercial. Thus, in accordance with one embodiment of the invention, viewers must provide some feedback to indicate that they watched the commercial before they are entitled to a reward. In the example of FIG. 2, set-top box 245 presents the viewer with a test question 265 at or near the end to the commercial. The question is based upon the content of the commercial, so viewers who watch the commercial are able to answer the question correctly. In the example depicted as a subsequent video frame 266 of television 235, a reward query 265 prompts the viewer with a query 269 asking the viewer to enter the previously displayed cruise destination into a form field 270. Entering the correct answer in field 270 entitles a viewer to the offered reward. (Matheny Detailed Description, 6th paragraph) (emphasis added)

Broadcasters may wish to pose questions for which there are no correct answers. For example, a sponsor may wish to ask survey questions. The invention may be adapted to provide rewards to viewers who answer such questions. Further, some viewers may find filling in blanks too cumbersome; thus, other embodiments employ simpler test methods (e.g., multiple-choice or true/false), or reward viewers for merely participating in interactive programs. Such participation may include selecting an icon with a pointing device or pressing one or more buttons on a remote control. Still other embodiments may demand more information from a viewer, such as by prompting the viewer to send an email message to a location identified in the

> program, and possibly by requiring the viewer fill out an electronic form. (Matheny Detailed Description, 7th paragraph) (emphasis added)

As these passages from Matheny indicate, Matheny is directed at a system and method that requires some sort of viewer action as part of the reward validation and fulfillment process. As described in Matheny, "viewers must provide some feedback to indicate that they watched the commercial before they are entitled to a reward". As such, Matheny is designed and implemented to require such viewer feedback or action. No such viewer feedback or viewer action is required in the invention claimed herein. This limitation of the present invention is captured in amended claim 1 as, "at a predetermined time and without requiring viewer action, sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record". This limitation is not taught in Matheny. In fact as set forth in the passages of Matheny set forth above, Matheny teaches that the identities of viewers who provide correct answers to the question are therefore forwarded to server 220, within which is maintained a database of viewers and corresponding earned entitlements. Thus, without viewer feedback, Matheny doesn't even store viewer identities in its database of those viewers have not provided valid feedback. Such a teaching in Matheny is directed away from the presently claimed invention that does not require such viewer interaction. Therefore, Matheny does not teach or suggest the invention presently claimed in amended claim 1.

Therefore, Applicant respectfully submits that at least for the reasons set forth above, independent claim 1 is allowable. In addition, because claims 2-10 present similar limitations as in claim 1 as argued above, Applicant submits that at least for the same reasons set forth above, claims 2-10 are also allowable and thus their rejections should be withdrawn.

Applicant therefore respectfully requests withdrawal of the pending rejections and allowance of the pending claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Jim H. Salter at 408-406-4855 to facilitate prosecution of this application.

Respectfully submitted,

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By his Representatives,

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Date July 23, 2007 By _____
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this _23rd_ day of __July__2007.

Jim H. Salter. _____

Name Signature